

HOWARD F. PITKIN,
BANKING COMMISSIONER

v.

Defendants.

APRIL 19, 2010

2. WNB created, offered, and sold two unregistered investment vehicles known as “BLM 1” and “BLM 2” (together the “BLM Investments”) to clients directed to WNB by Silverman and PSCC for the express purpose of investing in the BLM Investments. The assets of the BLM Investments were supposed to be held by WNB, but in fact the assets were simply turned over to Bernard L. Madoff (“Madoff”), perpetrator of the largest and most infamous Ponzi scheme in history, and his company Bernard L. Madoff Investment Securities (“BLMIS”). WNB never held actual custody of the assets of the BLM Investments. For these meager efforts, WNB,

Silverman, and PSCC charged their clients large fees and ignored obvious red flags that Madoff was perpetrating the massive fraud for which he is now serving 150 years in prison.

3. Neither WNB, nor Silverman, nor PSCC ever registered the BLM Investments under the Connecticut Uniform Securities Act, and neither Silverman nor PSCC ever registered as investment advisors under the Connecticut Uniform Securities Act.

4. WNB, Silverman, and PSCC made false and misleading statements in connection with the offering and sale of the BLM Investments including that WNB would hold the clients' assets as custodian and that WNB, Silverman, and PSCC would bill the clients' accounts and act in accordance with the terms of a written Custodial Agreement. In fact, WNB simply turned the clients' money over to Madoff and BLMIS, never acted as custodian of the assets of the BLM Investments, and repeatedly and knowingly allowed Silverman and PSSC to overcharge their clients.

5. WNB was utterly derelict in fulfilling its obligations as custodian, including, but not limited to, allowing Silverman to dictate how and when his fees were deducted from clients' assets, not calculating its own fees or the value of the clients' assets properly, permitting Silverman to control all contact and communication with clients, misrepresenting the nature of the clients' investments with BLMIS, and ignoring clear warning signs that Madoff was engaging in a fraud.

6. WNB's, Silverman's, and PSCC's misrepresentations, failure to disclose material information to investment clients, and failure to exercise minimal due diligence operated as a

fraud and deceit on investment clients by exposing those clients to Madoff's now notorious crimes. As a result, those clients lost millions of dollars.

7. In pursuing these and other illegal practices, WNB, PSCC, and Silverman violated the Connecticut Uniform Securities Act. Additionally, in pursuing these and other illegal practices, WNB materially assisted PSCC and Silverman in their violations of the Connecticut Uniform Securities Act as set forth herein. Pursuant to Conn. Gen. Stat. § 36b-27, Howard F. Pitkin, Commissioner of the Connecticut Department of Banking, by and through Richard Blumenthal, Attorney General of the State of Connecticut, seeks restitution, disgorgement, and civil penalties, as well as other injunctive and equitable relief to prevent these illegal practices from happening again.

II. PARTIES

8. Plaintiff Howard F. Pitkin, represented by Richard Blumenthal, Attorney General of the State of Connecticut, is the Commissioner of the Department of Banking for the State of Connecticut ("Banking Commissioner") with an office at the State Banking Department located in the City of Hartford, County of Hartford and State of Connecticut, and brings this action in his official capacity pursuant to Conn. Gen. Stat. § 36b-27.

9. Defendant Westport National Bank ("WNB") is a division of Connecticut Community Bank, N.A., a nationally-chartered bank whose headquarters are located 1495 Post Road East in the Town of Westport, County of Fairfield, State of Connecticut.

10. Defendant PSCC Services, Inc. ("PSCC") is a corporation organized under the laws of the State of Connecticut with offices for business located at 1175 Post Road East in the Town of Westport, County of Fairfield, State of Connecticut.

11. Defendant Robert L. Silverman ("Silverman") is an individual who resides in the Town of Wilton, County of Fairfield, State of Connecticut. Silverman holds a Masters Degree in Actuarial Science and has worked as an actuary specializing in pension and profit sharing plans and employee benefit plans. Silverman is the president and director of PSCC. Silverman was a fiduciary with respect to his clients participating in the BLM Investments.

III. FACTS

A. Silverman Advises His Clients to Invest with Madoff

12. In 1969, Silverman created and incorporated PSCC, Inc. ("PSCCI") to design, administer, and report for the pension and employee benefit plans of small corporations.

13. Sometime during the 1980s, Silverman first learned about Bernard L. Madoff Investment Securities ("BLMIS"). At that time, PSCCI only had one client that had BLMIS as its investment manager.

14. Silverman brought BLMIS to the attention of the Westport Bank and Trust Company ("WEBAT").

15. Silverman and WEBAT devised a plan whereby the assets of PSCCI clients would be "pooled" into one master custodian account through WEBAT, which in turn would be managed by BLMIS.

16. Silverman met with Madoff in New York to determine if BLMIS would accept a pooled custodial account from WEBAT. Madoff agreed to accept a pooled custodial account from WEBAT.

17. Although Silverman knew that some clients invested directly with BLMIS, and although he himself would later invest directly with BLMIS, Silverman never asked Madoff whether other PSCCI or PSCC clients could invest directly with BLMIS. A client investing directly with BLMIS would not have to pay a custodial fee to the bank.

18. In 1986, PSCCI and WEBAT entered into an agreement whereby WEBAT would enter into custodial agreements with PSCCI clients.

19. After 1986, whenever PSCCI clients expressed displeasure with their diversifications, returns, brokers, or custodians, Silverman would invariably advise those clients to invest with Madoff through WEBAT. Silverman never offered investment alternatives to these displeased PSCCI clients other than the WEBAT/BLMIS investment.

20. Silverman never disclosed to prospective investors the details of the BLMIS investment or its associated risks, nor did he disclose to prospective investors the details of the BLM Investments or their associated risks.

B. WNB, Silverman, and PSCC Direct Prospective Investors to Madoff

21. In December of 1996, WEBAT merged into, and subsequently operated as a part of, Lafayette American Bank and Trust Company in Bridgeport, Connecticut.

22. In March of 1999, Lafayette American Bank and Trust Company merged into, and subsequently operated as a part of, Hudson United Bank ("HUB") of Union City, New Jersey.

23. In April of 1999, HUB notified PSCCI that it would no longer take part in the institutional custody business. HUB expressed its interest to PSCCI in entering into one-on-one relationships with PSCCI clients whereby HUB would act as investment manager.

24. On May 6, 1999, defendant PSCC was incorporated. PSCC assumed PSCCI's role with regard to the PSCCI clients and their relationship with BLMIS.

25. PSCC was unwilling to enter into an arrangement whereby HUB would act as investment manager for PSCC's clients. Therefore, in the spring and early summer of 1999, PSCC was in the market for a new custodian for its clients invested in BLMIS.

26. WNB agreed to fill the role as purported custodian. In a July 2, 1999 letter, Michael H. Flynn, the President and Chief Executive Officer of WNB, wrote to Silverman that WNB was willing to enter into an arrangement whereby WNB would provide custodial services to certain clients of PSCC.

27. On July 16, 1999, WNB and PSCC entered into a formal agreement through which WNB agreed to assume all rights and duties associated with the "bank" as set forth in a "Description of Investment Process" agreement between PSCC and WNB and a "Custodian Agreement" to be signed between WNB and its new clients. An arrangement was also

established whereby WNB opened a brokerage account and options account with BLMIS in the name of WNB.

28. To effectuate the investment with BLMIS, WNB created two funds, "BLM 1" and "BLM 2" (together the "BLM Investments"), in which WNB pooled together the funds of clients for ultimate investment with BLMIS through WNB's brokerage and options accounts with BLMIS. In return for giving their money to WNB, clients received "shares" or "units" of the BLM 1 and BLM 2 funds in proportion to the amount of money each client invested. Subsequently, clients received numerous account statements from WNB purporting to show the "unit market value" or "total market value" of their shares in BLM 1 and BLM 2, depending on the value of the investments and trades purportedly made by BLMIS on the clients' behalf.

29. The BLM Investments are securities under the Connecticut Uniform Securities Act. Neither Silverman, PSCC, nor WNB ever registered the BLM Investments as securities as required by the Connecticut Uniform Securities Act. Neither Silverman nor PSCC ever registered to act as investment advisers, or transact business as agents or broker-dealers with regard to the purchase or sale of securities in Connecticut. WNB, as the issuer of the BLM Investments, never registered Silverman as an agent of issuer in connection with the offer and sale of the BLM Investments.

30. Silverman offered for sale the BLM Investments issued by WNB. Based on the recommendation and advice of Silverman and PSCC, certain PSCC clients, including those located in Connecticut, purchased the BLM Investments issued by WNB and offered by

Silverman, PSCC, and WNB. In connection with the offer and sale of the BLM Investments, Silverman recommended to PSCC clients that they invest with BLMIS through the custodial arrangement with WNB.

31. In connection with the offering and sale of the BLM Investments, Silverman and PSCC recommended and advised certain clients to invest in the BLM Investments and enter into the Custodian Agreement with WNB. In connection with the offering and sale of the BLM Investments, WNB stated that it would act as the custodian for the clients' assets in the BLM Investments and would abide by the terms set forth in the Custodian Agreement.

32. Although WNB represented to the clients in connection with the offering and sale of the BLM Investments that WNB would act as custodian of the assets of the BLM Investments and otherwise comply with the Custodian Agreement, in fact, WNB effectively never had custody of the assets of the BLM Investments. At all times, nearly all of the assets of the BLM Investments were held by Madoff and/or BLMIS.

33. Although WNB did not have actual custody of the assets of the BLM Investments, it used the custody screen to pay fees to itself, Silverman, or PSCC, and to meet client redemption requests. To accomplish these tasks, WNB sent a request for the necessary funds to BLMIS.

34. In connection with the offering and sale of the BLM Investments, Silverman and PSCC represented to clients and prospective investors that the assets of the BLM Investments would be held by WNB and that the BLM Investments would offer a safe, steady return. In

connection with the offering and sale of the BLM Investments, neither WNB, Silverman, nor PSCC ever provided any proper disclosures to clients or prospective investors concerning the characteristics, benefits, or risks of the BLM Investments, or the compensation the defendants reaped in connection therewith.. In connection with the offering and sale of the BLM Investments, Silverman and PSCC represented to the clients that they would only charge fees based upon mutually agreed terms.

C. WNB, Silverman, and PSCC Mislead and Defraud Clients as to the Nature of the Investments with Madoff

35. The Custodian Agreement represented to investors that the “Principal has chosen BLMIS to receive and to invest the Principal’s funds, and has not relied on the Bank in choosing to give BLMIS full discretionary authority.” This representation was false.

36. Notwithstanding this language in the Custodian Agreement, WNB, Silverman, and PSCC predetermined that BLMIS would act as the manager of the BLM Investments. Silverman and PSCC offered no alternative investment managers to prospective investors, and access to BLMIS was only afforded to prospective investors as part of PSCC’s relationship with BLMIS through WNB.

37. WNB, Silverman, and PSCC led prospective investors to believe that WNB was holding investor assets in the BLM Investments. For example, the Custodian Agreement contains several descriptions of the assets held by WNB. Additionally, PSCC, with WNB’s full knowledge, falsely told investors and prospective investors that WNB held investor funds and

that PSCC was being notified by WNB as to the current market value of the funds and that WNB was keeping track of where the funds were invested. Silverman, when describing the arrangement, told investors and prospective investors that WNB “would be handling the money.” In fact, rarely, if ever, did Silverman or PSCC disclose to investors or prospective investors the true scope of BLMIS’s involvement with the investments.

38. The Custodian Agreement further represents that the “Bank shall maintain adequate records indicating the ownership by the Principal of investments with BLMIS and held by the Bank as custodian for the Principal,” and that the “Bank shall render at least annually statements reflecting the property held by it as custodian hereunder.” In reality, investors did not have direct investments with BLMIS.

39. Notwithstanding WNB’s representations in the Custodian Agreement, it was WNB that pooled investor assets and that held an account at BLMIS. WNB relinquished investment control to the exclusive control of Madoff and BLMIS. WNB falsely gave clients the impression that, as custodian, it was holding the assets underlying the BLM Investments for safekeeping.

40. Although WNB represented to investors and prospective investors that it would act as custodian for the BLM Investments, in truth, WNB allowed Silverman to control all client contact and correspondence regarding the BLM Investments, even when such contact or correspondence was directed to WNB. For example, if investors or prospective investors called WNB for information, Silverman would return the call. Dennis Clark, the Vice-President of

WNB, allowed Silverman to dominate investor contact and correspondence even though he considered Silverman to be “difficult,” “argumentative,” and “abrasive.”

41. Most tellingly, WNB provided PSCC with WNB letterhead so that PSCC could prepare letters for investors and prospective investors as if such investors were corresponding with WNB. Dennis Clark, the Vice-President of WNB, would go to PSCC and simply sign letters that Silverman and PSCC had prepared on WNB letterhead, as if the letters were coming from WNB.

42. In connection with the offering of the BLM Investments, WNB allowed PSCC to prepare all the paperwork for prospective investors, even though such paperwork included the Custodian Agreement between WNB and the investors.

43. The Custodian Agreement represents that the “Principal and the Bank . . . acknowledge that the Principal has entered into an agreement with PSCC for services to be provided by PSCC with respect to Principal’s investments made by BLMIS.” WNB knew, however, that Silverman and PSCC had only an oral understanding with investors or prospective investors regarding the investments with BLMIS, and that Silverman and PSCC never entered into written agreements with investors or prospective investors regarding the investments with BLMIS.

44. In the “Overview” section of the Description of Investment Process, the Custodial Agreement states, that “the Bank obtained a legal opinion that . . . this arrangement does not constitute a common trust fund; a common investment fund; or involve a commingling of assets

of the Plans and IRA's." WNB nevertheless commonly received various completed IRS Form 5305's from the clients depending upon the type of IRA account they were using, and WNB provided to clients a standardized IRA Disclosure Statement stating that the assets of IRA's cannot be commingled with other property except in a common trust fund or common investment fund. WNB, Silverman, and PSCC knew the clients invested funds were comingled together in the BLM 1 and BLM 2 accounts, but at no time disclosed to investors or prospective investors the potentially adverse tax ramifications of commingling IRA funds.

D. WNB, Silverman, and PSCC Failed to Disclose to Prospective Investors and Investors Their Dishonest and Fraudulent Billing Practices

45. The Custodian Agreement represents that WNB is "authorized and directed to pay to PSCC from the custodial account of Principal . . . an annual fee for services provided by PSCC an amount equal to .010 of the average assets (determined on an annual basis) held by the Bank under this Custodian Agreement, plus .002 of the amount of each transaction effected by BLMIS on behalf of the Principal with a maximum of .025 of average assets. Such fees shall be paid in such manner and at such time as shall reasonably be determined by the custodian and as shall reasonably be acceptable to PSCC." In 2005, the Custodian Agreement was amended to represent that WNB is directed to pay to PSCC from the custodial account an annual recordkeeping fee in the amount of .006 of the assets at the time of the billing.

46. Notwithstanding this language in the Custodian Agreement, in practice the PSCC fee always amounted to a total of 3.5% of the assets prior to the 2005 amendment. This fee was

so high that even Madoff himself questioned the amount of the fee. After Madoff complained in 2005, PSCC lowered its fee to approximately 2.4% of the assets of the clients.

47. Additionally, notwithstanding the language of the Custodian Agreement, in practice WNB took no active part in determining the manner and time for payment of the PSCC fee. Instead, PSCC provided billing tables to WNB indicating the amount of the recordkeeping fee it wanted to be deducted from the assets of the clients. WNB accepted PSCC's calculation of these fees unquestioningly and deducted these fees from the clients' assets. In fact, Dennis Clark, WNB's Vice-President, stated that PSCC would send billings to WNB, and WNB "simply paid the bills as presented."

48. In addition, despite WNB's responsibility under the Custodian Agreement to determine the manner and time of fees paid to PSCC, Dennis Clark stated that when clients called WNB to inquire about PSCC's fees, he "recommended strongly that they get in contact with [Silverman]."

49. Moreover, PSCC did not charge its fee based on the average assets as determined on an annual basis. For example, to determine its billing for the fourth quarter of 2004, PSCC used a unit value from April of 2006. In using this approach, PSCC not only failed to base its fee as set forth in the Custodian Agreement, but also used a unit value for a timeframe (April of 2006) that was not associated with the actual quarterly billing period (fourth quarter of 2004).

50. Additionally, in a PSCC letter addressing a client's billing concerns, Silverman stated that PSCC's "billing calculations utilize an average of four quarterly valuations to obtain

an average, which is certainly an acceptable method.” In reality, PSCC did not base its fee on average annual assets, or any average. PSCC would merely plug in a unit value (or share price) of the BLM Investments for a specific date to arrive at a desired asset level. If PSCC had calculated its fees in the manner represented to clients, it would have always resulted in a lower fee to the client.

51. PSCC was behind in its billing at least as far back as the year 2000. At any point in time, PSCC could have immediately become current in its billing. Nevertheless, Silverman did not want to bring PSCC’s billing up to date with one large bill because it would “not have a nice smooth curve.”

52. Instead of becoming current in its billing, PSCC would take the earnings attributable to the continued presence of PSCC fees still remaining in a client’s account. In essence, PSCC was sharing in the capital gains, or appreciation, by taking accrued fees, and calculating capital gains on those accrued fees, and adding such capital gains to its clients’ bills.

53. WNB was aware of the irregular basis of PSCC’s billing, yet never asked Silverman or PSCC why PSCC’s billing was irregular, or stopped the practice as it was obligated to do under the Custodial Agreement.

54. PSCC used a Microsoft Excel spreadsheet to create the billing tables provided to WNB for PSCC’s fees. For this spreadsheet, Silverman directed PSCC staff to enter in the unit value and the number of shares as determined from the security holders report provided by WNB. At Silverman’s direction, PSCC staff would enter the unit value into a billing table

column that could be seen on the computer screen at PSCC, but once printed, was hidden from view on the print out.

55. The PSCC billing tables printed out by PSCC and received by WNB for the purpose of paying PSCC's fees did not include the hidden column. By keeping this spreadsheet column hidden, PSCC fraudulently concealed the fact that it was not using unit values attributable to the actual past due billing periods, and that it was effectively inflating its fees.

56. WNB, as custodian, was responsible for determining the manner and time for the payment of the PSCC fees. Nevertheless, from 1999 to 2005, WNB made no effort to determine that PSCC fees were calculated correctly. Even when a December 31, 2005 WNB audit report did note that PSCC was not calculating its fees in accordance with the Custodian Agreement, WNB still did nothing and continued to allow PSCC to collect fees in violation of the Custodial Agreement.

57. Under the Custodian Agreement, WNB received a custodial services fee equal to an annual charge of .006 of the average assets held as determined on an annual basis.

58. In fact, WNB's custodial fee was not based on an average asset level determined on an annual basis, but on a quarterly asset level of the average of the three months in that quarter.

59. In the WNB/PSCC/BLMIS relationship, BLMIS was receiving commissions, PSCC was receiving recordkeeping, administrative, and sometimes actuarial fees, and WNB was

receiving the custodial fee. Prior to 2005, the overall cost to the BLM Investments clients for the WNB and PSCC fees was 4.1% of the account assets and 3% of the account assets after 2005.

60. From 1998 until approximately halfway through 2007, PSCC collected fees from the BLM Investments arrangement totaling \$13.8 million. In no full year did PSCC earn less than \$1.25 million in fees from the BLM Investments arrangement.

61. From 2000 until approximately halfway through 2007, WNB collected custodial fees from the BLM Investments arrangement in excess of \$2,400,000. In no full year did WNB earn less than \$270,000 in custodial fees from the BLM Investments arrangement.

E. WNB, Silverman, and PSCC Ignore Madoff's Suspicious Trading Activities and Fail to Accurately Calculate Unit Values for the BLM Investments

62. WNB was responsible for calculating the unit values of the BLM Investments. WNB was to receive both confirmations of transactions for its account at BLMIS, and monthly statements from BLMIS indicating transactions and month-end positions.

63. Once in possession of these documents, WNB was to review and calculate the unit value, units held, and market value of the clients' pooled investments at BLMIS by extracting the month-end share price and the share amount of the individual securities that BLMIS reportedly held.

64. To calculate unit value, WNB first transferred the securities and cash balances held in WNB's BLMIS trading account and the positions held in the BLMIS options account to a "Calculation of BLM Unit Value" worksheet ("UV Worksheet"). WNB next transferred the cash

balance in the WNB clearing, or “checking,” account to the UV Worksheet. WNB then totaled these assets to obtain a grand total market value for the BLM Investments.

65. WNB then would transfer the units held at month’s end for the BLM Investments from the appropriate month’s end “Security Holders” report. Finally, to determine unit value, WNB would take the grand total market value for the BLM Investments and divide it by the grand total of BLM units held, as calculated by WNB, to calculate month-end unit value.

66. WNB created two investment pools that together constituted the BLM Investments. BLM 1 was used for clients who invested through an employee benefit plan. BLM 2 was used for clients investing through an individual retirement account. Regardless, the BLM Investments had the same unit values.

67. PSCC would simultaneously calculate unit values by using the same reports it received from BLMIS, and would compare its numbers with WNB’s numbers.

68. Despite WNB’s responsibility for calculating unit values, there were instances where, during the time when WNB acted as custodian, PSCC’s calculation was used to determine the unit value of the BLM Investments.

69. Additionally, the BLMIS trade confirmations were not always consistent with the BLMIS monthly statements. For example, a BLMIS trade confirmation would indicate that a security had been purchased, but the BLMIS monthly statement would indicate that the exact same security had been sold, or vice-versa. Or, the maturity dates for U.S. Treasury Bills as reported on the BLMIS trade confirmations, and in the activity portion of the BLMIS monthly

statement, would somehow differ from the maturity dates for the same U.S. Treasury Bills as reported in the position section of the same BLMIS monthly statement.

70. Records tracking the account performances of Silverman's personal direct investments with BLMIS and the BLM Investments show that Silverman's personal account outperforms the BLM Investments in eight out of the eleven years reviewed. Silverman never inquired into why his returns were typically higher than the returns for BLM Investments.

71. The January 2008 BLMIS statement reveals that thirty-seven of the fifty securities that BLMIS claims were held in the WNB account at month's end were given prices in the position section of the BLMIS statement that were higher than the actual month-end closing prices for those securities.

72. Despite the obvious warning signs evidenced by these and other inconsistencies, WNB never questioned BLMIS as to why its trade confirmations were not always consistent with its monthly statements. These and other obvious "Red Flags" should have alerted WNB, PSCC and Silverman to the ponzi scheme being operated by Madoff. Instead, WNB, Silverman, and PSCC simply continued to collect their high fees from their clients and never attempted to look into the trading activity of BLMIS.

73. As a result of failing to correct obvious inaccuracies and outright frauds in the BLMIS monthly statements, WNB, Silverman, and PSCC calculated incorrect and overstated grand total market values and unit values. Thus, Silverman, PSCC, and WNB overstated the

assets, which in turn resulted in increased, and inaccurate, fees being charged to investors.

IV. CAUSES OF ACTION

Count One: Violation of the Connecticut Uniform Securities Act (Conn. Gen. Stat. § 36b-4) As To WNB

1-73. Paragraphs 1 through 73 of the Complaint are hereby repeated and re-alleged as Paragraphs 1 through 73 of Count One as if fully set forth herein.

74. By the acts and practices alleged herein, WNB, in connection with the offer, sale, or purchase of the BLM Investments and/or other securities offered, sold or purchased as part of the BLM Investments, employed a device, scheme or artifice to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made not misleading; engaged in acts, practices, or a course of business which operates or would operate as a fraud or deceit upon any person; or engaged in dishonest or unethical practices, including, but not limited to, the following:

- a. failing to provide any disclosure to investors describing the characteristics, benefits, and risks associated with the BLM Investments;
- b. misrepresenting that WNB would hold custody of the assets of the BLM Investments when in fact WNB never held custody of the assets of the BLM Investments;

- c. misrepresenting that the “Bank shall maintain adequate records indicating the ownership by the Principal of investments with BLMIS” when in fact WNB did not maintain such records;
- d. misrepresenting that WNB “shall render at least annually statements reflecting the property held by it as custodian hereunder” when in fact WNB did not render such statements;
- e. misrepresenting that, with respect to PSCC’s fees, “[s]uch fees shall be paid in such manner and at such time as shall reasonably be determined by the custodian” when in fact WNB did not determine the manner and time to pay PSCC’s fees, but instead allowed Silverman to control the manner and time for payment of PSCC’s fees;
- f. misrepresenting that WNB was to receive a custodial service fee equal to an annual charge of .006 of the average assets held as determined on an annual basis. Nevertheless, as reflected in WNB’s annual statements for client accounts, WNB charged a custodial fee that was not based on an average asset level determined on an annual basis, but on a quarterly asset level of the average of the three months in that quarter. For example, as reflected in the “Receipts and Disbursements” sections of the 2000-2007 annual statements for the W.R. Johnson Co. Inc. P/P/S Ben R. Backus account and the Cynthia S. Schrank Roth IRA accounts, WNB collected custodial fees on a quarterly, not annual, basis;

- g. knowingly giving Silverman and PSCC blank copies of WNB letterhead, allowing Silverman and PSCC to prepare correspondence to clients seemingly from WNB, which WNB's Vice-President, would simply sign. Clark testified before the department that it was WNB's "practice" to provide Silverman and PSCC with blank WNB letterhead, thus "allow[ing] [Silverman] to prepare for signature . . . by me acknowledgment letters that were sent out to the individual account holders." Clark testified that he "signed them all," and that he would visit PSCC's office "at least weekly" to do so; and
- h. representing that WNB was responsible for calculating the unit values of the BLM Investments, yet failed to discover overstated values in the reported BLMIS monthly statements. For example, in the January 2008 BLMIS statement to WNB, thirty-seven of the fifty securities that BLMIS claimed to be held in the WNB account at month's end were given prices in the position section of the BLMIS statement that were higher than that actual month-end closing prices for those securities. WNB failed recognize these clear errors in the BLMIS statement and used the overstated values contained therein, causing WNB to overstate its unit value calculations, which in turn led to WNB charging inaccurate and inflated custodial fees.

75. WNB knew or should have known that its conduct alleged herein violated Conn.

Gen. Stat. § 36b-4.

76. WNB, through its above-described actions and omissions, violated Conn. Gen. Stat. § 36b-4 by engaging in numerous activities in connection to with the offer, sale, or purchase of a security that were fraudulent, dishonest, or unethical business practices or omissions of material facts that misled investors.

Count Two: Violation of the Connecticut Uniform Securities Act (Conn. Gen. Stat. § 36b-4) As To Silverman and PSCC

1-73. Paragraphs 1 through 73 of the Count One are hereby repeated and re-alleged as Paragraphs 1 through 73 of Count Two as if fully set forth herein.

74. By the acts and practices alleged herein, Silverman and PSCC, in connection with the offer, sale, or purchase of the BLM Investments and/or other securities offered, sold or purchased as part of the BLM Investments, employed a device, scheme or artifice to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made not misleading; engaged in acts, practices, or a course of business which operates or would operate as a fraud or deceit upon any person; or engaged in dishonest or unethical practices, including, but not limited to, the following:

- a. failing to provide any disclosure to investors or prospective investors describing the characteristics, benefits, and risks associated with the BLM Investments;
- b. misrepresenting how their fees were calculated. For example, in a March 22, 2004 letter to client Dr. Edward M. Straub, who had questioned PSCC's billing practices, Silverman stated that PSCC's "billing calculations utilize an average of

four quarterly valuations to obtain an average, which is certainly an acceptable method.” In reality, PSCC did not base its fees on average annual assets, or any average. If PSCC had calculated its fees in the manner described in the letter to Dr. Straub, it would have always resulted in a lower fee to the client;

- c. calculating their fees in contravention of the Custodial Agreement. For example, Silverman was aware that PSCC’s total fee after the 2005 revision to the Custodian Agreement would be 2.4%, which included a 1.8% administrative services fee and a .6% recordkeeping fee. Nevertheless, during his testimony before the Department, Silverman admitted that this fee level was not disclosed to investors or prospective investors in the revised Custodian Agreement. For example, the revision to the Custodian Agreement for the Robin Abramowitz IRA account dated January 5, 2005 simply reflected that WNB was directed to pay to PSCC from the custodial account an annual recordkeeping fee in the amount of .006 of the assets at the time of the billing, and did not state that PSCC would also collect a 1.8% administrative services fee.
- d. submitting billing tables to WNB containing a hidden column visible only on PSCC’s computers. Helen Demos, a PSCC employee, testified before the department that Silverman would provide WNB with billing tables containing “a column that was not printed.” Silverman and PSCC submitted such deceptive

billing tables to WNB knowing that WNB would use them in paying PSCC's fees;

- e. providing false descriptions to WNB auditors of the PSCC billing practices established after the 2005 fee revision by stating that "all administrative fees are now fixed amounts and not based on account assets." In his deposition testimony to the Department, Silverman testified that the revised administrative fee was actually based on a percentage of the "assets annually;"
- f. regularly sending letters to clients containing false information. For example, in a January 31, 1992 letter and a February 8, 1993 letter to client Lawrence I. Brown; a February 22, 1994 letter to client Walter C. King III; a February 12, 1996 letter to client John C. Pistell; a January 28, 1997 letter to client Ernest M. Bevilacqua; a January 29, 1997 letter and a January 27, 1999 letter to client Kathleen M. Conley; and a March 6, 1998 letter to client Grace B. Veenis, PSCCI falsely stated that the clients' assets were "being held" by the custodian bank, and that the custodian bank had been audited. In addition, in a September 18, 2006 letter to clients Dr. and Mrs. Alan J. Gill, and in October 8, 2008 letters to clients Marshall J. Touponse; Mr. and Mrs. William S. Sklar; Dr. and Mrs. Alan J. Gill; Dr. and Mrs. Stephen R. Levinson; and Mr. Ben R. Backus, Silverman stated that WNB had notified PSCC as to the current market value of the assets and where the assets were invested; and

- g. providing misleading information to investors and prospective investors when describing the arrangement for the BLM Investments. Silverman himself testified before the Department that he would tell clients that the bank “would be handling the money,” when in fact the bank never “handled” the clients’ assets. Instead, the assets were always turned over to BLMIS’s control, and BLMIS had complete discretion over investing those assets.

75. Silverman and PSCC knew or should have known that their conduct alleged herein violated Conn. Gen. Stat. § 36b-4.

76. Silverman and PSCC, through the above-described activities violated Conn. Gen. Stat. § 36b-4 by engaging in numerous activities in connection with the offer, sale, or purchase of securities that were fraudulent, dishonest, or unethical business practices or omissions of material facts that misled investors, or that operated as a fraud or deceit upon investors and prospective investors.

Count Three: Violation of the Connecticut Uniform Securities Act (Conn. Gen. Stat. § 36b-6(c)) As To Silverman and PSCC

1-73. Paragraphs 1 through 73 of Count One are hereby repeated and re-alleged as paragraphs 1 through 73 of Count Three as if fully set forth herein.

74. By the acts and practices alleged herein, Silverman and PSCC engaged in the business of advising others on the advisability of investing in, purchasing, or selling securities (the BLM Investments) in return for compensation.

75. Silverman and PSCC never registered as investment advisers with the Banking Commissioner.

76. Silverman and PSCC acted as unregistered investment advisers in this state in violation of Conn. Gen. Stat. § 36b-6(c)(1).

Count Four: Violation of the Connecticut Uniform Securities Act (Conn. Gen. Stat. § 36b-5) As To Silverman and PSCC

1-73. Paragraphs 1 through 73 of the Count One are hereby repeated and re-alleged as paragraphs 1 through 73 of Count Four as if fully set forth herein.

74. By the acts and practices alleged herein, Silverman and PSSC were required to register as investment advisors, but nevertheless failed to provide the required written disclosures required by Conn. Gen. Stat. § 36b-5(b)(1).

75. By the acts and practices alleged herein, Silverman and PSCC, while receiving compensation for advising other persons as to the value of securities or their purchase or sale, employed a device, scheme or artifice to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made not misleading; engaged in acts, practices, or a course of business which operates or would operate as a fraud or deceit upon any person, including, but not limited to, the following:

- a. failing to provide any disclosure to investors describing the characteristics, benefits, and risks associated with the BLM Investments;

- b. billing clients an amount higher than the amount permitted under the Custodian Agreement or otherwise agreed to by clients;
- c. billing clients not based on the average assets of a client as determined on an annual basis as required by the Custodial Agreement, but by using methods not authorized by any agreement with the clients and which resulted in Silverman and PSSC earning higher fees to the detriment of clients;
- d. not billing clients in a timely and regular manner;
- e. sharing in the capital gains of the client accounts without proper disclosure through Silverman's and PSSC's practice of taking the investment gains attributable to their late billing practices; and
- f. prepared letters to clients on WNB letterhead and seemingly from WNB, but in fact from Silverman and PSSC.

76. Silverman and PSSC knew or should have known that their conduct alleged herein violated Conn. Gen. Stat. § 36b-5.

77. Silverman and PSSC, through the above-described activities, violated Conn. Gen. Stat. § 36b-5 by engaging in numerous activities as investment advisers that were fraudulent, dishonest, or unethical business practices or omissions of material facts that misled investors.

Count Five: Violation of the Connecticut Uniform Securities Act (Conn. Gen. Stat. § 36b-16) As To WNB, Silverman, and PSCC

1-73. Paragraphs 1 through 73 of Count One are hereby repeated and re-alleged as paragraphs 1 through 73 of Count Five as if fully set forth herein.

74. By the acts and practices alleged herein, Silverman, PSCC, and WNB offered and sold unregistered securities in Connecticut.

75. By the acts and practices alleged herein, WNB, Silverman, and PSCC violated Conn. Gen. Stat. § 36b-16.

Count Six: Violation of the Connecticut Uniform Securities Act (Conn. Gen. Stat. § 36b-6(a) and (b)) As To Silverman and WNB

1-73. Paragraphs 1 through 73 of Count One are hereby repeated and re-alleged as paragraphs 1 through 73 of Count Six as if fully set forth herein.

74. By the acts and practices alleged herein, Silverman transacted business as an unregistered agent in this state.

75. By the acts and practices alleged herein, WNB employed Silverman as an unregistered agent in this state.

76. Silverman violated Conn. Gen. Stat. § 36b-6(a).

77. WNB violated Conn. Gen. Stat. § 36b-6(b).

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests the following relief:

1. A finding that by the acts alleged herein, WNB, Silverman, and PSCC engaged in acts and practices within the State of Connecticut that violated the Connecticut Uniform Securities Act, and WNB engaged in acts and practices within the State of Connecticut that materially assisted Silverman and PSCC in violating the Connecticut Uniform Securities Act;
2. An injunction pursuant to Conn. Gen. Stat. § 36b-27 enjoining WNB, Silverman, and PSCC from engaging in any acts that violate the Connecticut Uniform Securities Act, including, but not limited to, the dishonest and deceptive acts and practices alleged herein;
3. An order pursuant to Conn. Gen. Stat. § 36b-27 directing WNB, Silverman, and PSCC each to pay a civil penalty of \$100,000 for each and every violation of the Connecticut Uniform Securities Act or any regulation, rule or order promulgated thereunder;
4. An order pursuant to Conn. Gen. Stat. § 36b-27 directing WNB, Silverman, and PSCC to pay restitution;
5. An order pursuant to Conn. Gen. Stat. § 36b-27 directing WNB, Silverman, and PSCC to disgorge all revenues, profits, and gains achieved in whole or in part through the fraudulent, dishonest, and deceptive acts and practices complained of herein;
6. An order pursuant to Conn. Gen. Stat. § 36b-27 directing WNB, Silverman, and PSCC to pay reasonable attorneys' fees to the State;
7. Costs of suit; and

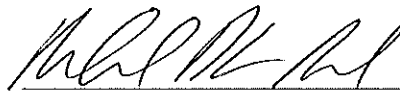
8. Such other relief as this Court deems just and equitable.

Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

Dated at Hartford, Connecticut, this 19th day of April, 2010.

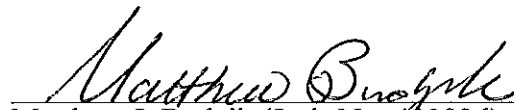
PLAINTIFF

**HOWARD F. PITKIN,
BANKING COMMISSIONER**



RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY:



Matthew J. Budzik (Juris No. 423926)
Patrick T. Ring (Juris No. 430268)
Assistant Attorneys General
Finance Department
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5270
Fax: (860) 808-5385

RETURN DATE: MAY 4, 2010

HOWARD F. PITKIN,
BANKING COMMISSIONER

Plaintiff,

v.

WESTPORT NATIONAL BANK, a division of
CONNECTICUT COMMUNITY BANK, N.A.;
PSCC SERVICES, INC.; and
ROBERT L. SILVERMAN

Defendants.

SUPERIOR COURT
JUDICIAL DISTRICT OF
HARTFORD AT HARTFORD

APRIL 19, 2010

AMOUNT IN DEMAND

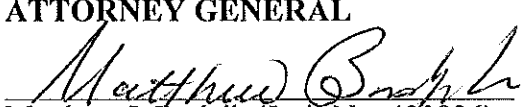
The amount, legal interest or property in demand is \$15,000.00 or more, exclusive of
interest and costs.

PLAINTIFF

**HOWARD F. PITKIN,
BANKING COMMISSIONER**

**RICHARD BLUMENTHAL
ATTORNEY GENERAL**

BY:


Matthew J. Budzik (Juris No. 423926)
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Assistant Attorneys General
Finance Department
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Fax: (860) 808-5385